# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

TESSERA ADVANCED TECHNOLOGIES, INC.,	) ) )
DI : .: .: .: .: .: .: .: .: .: .: .: .: .	) No. 2:17-cv-671-JRG
Plaintiff,	)
v.	) JURY TRIAL DEMANDED
	)
SAMSUNG ELECTRONICS CO., LTD. and	)
SAMSUNG ELECTRONICS AMERICA,	)
INC.,	)
	)
Defendants.	)
	)

# RESPONSE TO DEFENDANTS' NOTICES REGARDING DECISION IN RELATED ITC INVESTIGATION AND INITIATION OF ARBITRATION

Plaintiff Tessera Advanced Technologies, Inc. ("Tessera" or "Plaintiff") respectfully submits this Response to Defendants Samsung Electronics Co., Ltd. ("SEC") and Samsung Electronics America, Inc.'s ("SEA") (collectively, "Samsung" or "Defendants") Notices Regarding Decision in Related ITC Investigation and Initiation of Arbitration. (D.I. 76 & 86.) The decision that issued in the International Trade Commission ("ITC") does not impact the Court's consideration of Samsung's Motion to Stay for at three reasons.

First, the ITC applied a completely different legal standard than what this Court would apply, making the decision readily distinguishable. In terminating the ITC proceedings, the Administrative Law Judge applied an extremely low standard—he found that Samsung's assertion of arbitrability was not "wholly groundless." But that standard does not apply to Samsung's Motion to Stay before this Court. To resolve Samsung's Motion, the Court must determine: "whether there is a written agreement to arbitrate' [and] 'whether any of the issues raised are

within the reach of that agreement." Samsung Mot. at 5 (citing *Complaint of Hornbeck Offshore* (1984) Corp., 981 F.2d 752, 754 (5th Cir. 1993)). Accordingly, while the Administrative Law Judge only needed to determine whether or not Samsung's arguments were *wholly groundless*, the Court must decide whether Samsung's arguments are *correct*.

Second, ITC decisions are not legally binding on federal district courts. See, e.g., Rapistan Sys. Advertising Corp. v. Daifuki Am. Corp., No. A-03-CA-682-LY, 2006 U.S. Dist. LEXIS 100612, at \*8 (W.D. Tex. Feb. 9, 2006) ("Even Federal Circuit decisions regarding ITC determinations have no preclusive effect on subsequent litigation."); Tandon Corp. v. ITC, 831 F.2d 1017 (Fed. Cir. 1987) ("Therefore, it seems clear that any disposition of a Commission action by a Federal Court should not have a res judicata or collateral estoppel effect in cases before such courts."). Therefore, the Court is free to evaluate Samsung's motion based on its own judgment, independent of the ITC's ruling.

Third, as set forth in Tessera's petition for review filed at the ITC, the Administrative Law Judge's reasoning and conclusions were simply wrong, both as a matter of fact and law. Among other things, the Administrative Law Judge ignored that the arbitration clause in the Samsung-Matsushita agreement expressly limits the requirement to arbitrate only to the "Parties," an expressly defined term that only includes Samsung and Matsushita, and not their successors or assigns. Tessera never agreed to arbitration and the plain terms of the agreement do not extend the arbitration clause to non-signatories who are not "Parties." For the Court's convenience, the public version of Tessera's petition for review is attached to this response.

/s/ Lawrence J. Gotts by permission

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice was served on all counsel of record who have consented to electronic service as this district requires in accordance with Local Rule CV-5(a)(3)(A) on this 23rd day of June 2018.

/s/ Claire Henry